

**IN THE
SUPREME COURT OF INDIANA**

CASE NUMBER:

ORDER AMENDING RULES OF TRIAL PROCEDURE

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Rules 3, 4, 5, 27, 30, 31, 32, 38, 56, 58, 77, 79, and 81 of the Indiana Rules of Trial Procedure are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

INDIANA RULES OF TRIAL PROCEDURE

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Rule 3.1 Appearance

(A) Initiating party. At the time an action is commenced, the party initiating the proceeding shall file with the clerk of the court an appearance form setting forth the following information:

- (1) Name, address and telephone number of the initiating party or parties ~~to the proceeding;~~ filing the appearance form;
- (2) Name, address, attorney number, telephone number, FAX number, and ~~computer~~ e-mail address of any attorney representing the ~~initiating~~ party, as applicable;
- (3) The case type of the proceeding [Administrative Rule 8(B)(3)];
- (4) A statement that the party will or will not accept service by FAX;
- (5) In domestic relations, Uniform Reciprocal Enforcement of Support (URES), paternity, delinquency, Child in Need of Services (CHINS), guardianship, and any other proceedings in which support may be an issue, the Social Security Identification Number of all family members;

(6) The caption and case number of all related cases;

(7) Such additional matters specified by state or local rule required to maintain the information management system employed by the court; and

(8) In a proceeding involving a protection from abuse order, a workplace violence restraining order, or a no-contact order, the initiating party shall provide to the clerk a public mailing address for purposes of legal service. The initiating party may use the Attorney General Address Confidentiality program established by statute.

(B) Responding parties. At the time the responding party or parties first appears in a case, such party or parties shall file an appearance form setting forth the ~~following~~ information: set out in Section (A) above.

~~(1) Name, address and telephone number of the party or parties responding;~~

~~(2) Name, address, attorney number, telephone number, FAX number, and computer address of the attorney representing the responding party or parties, as applicable;~~

~~(3) The case number previously assigned to the proceeding;~~

~~(4) A statement that the responding party or parties will or will not accept service by FAX; and~~

~~(5) Such additional matters specified by state or local rule required to maintain the information management system employed by the court.~~

(C) Intervening Parties. At the time the first matter is submitted to the court seeking to intervene in a proceeding, the intervening party or parties shall file an appearance form setting forth the ~~following~~ information: set out in Section (A) above.

~~(1) Name, address and telephone number of the party or parties seeking to intervene;~~

~~(2) Name, address, attorney number, FAX number, and computer address of the attorney representing the intervening party or parties, as applicable;~~

~~(3) The case number previously assigned to the proceeding;~~

~~(4) A statement that the intervening party or parties will or will not accept service by FAX; and~~

~~(5) Such additional matters specified by state or local rule required to maintain the information management system employed by the court.~~

(D) Confidentiality of identifying information. Information Excluded from Public Access. ~~In a proceeding involving a protection from abuse order, a workplace violence restraining order, a no contact order, or a proceeding which is confidential~~

~~pursuant to Administrative Rule 9, such identifying information~~ Any appearance form information or record defined as not accessible to the public pursuant to Administrative Rule 9(G)(1) shall be confidential and/or filed under seal as provided by statute and/or administrative rules in a manner required by Trial Rule 5.

(E) Completion and correction of information. In the event matters must be filed before the information required by this rule is available, the appearance form shall be submitted with available information and supplemented when the absent information is acquired. Parties shall promptly advise the clerk of the court of any change in the information previously supplied to the court.

In a motion for leave to withdraw appearance, an attorney shall certify the last known address and telephone number of the party, subject to the confidentiality provisions of Sections (A)(8) and (D) above, before the court may grant such a motion.

(F) Forms. The Division of State Court Administration shall prepare and publish a standard format for compliance with the provisions of this rule.

(G) Service. The Clerk of the Court shall use the information set forth in the appearance form for service by mail under Trial Rule 5(B)(2).

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Rule 4.6. Service upon organizations

(A) Persons to be served. Service upon an organization may be made as follows:

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(4) In the case of a local governmental organization, upon the executive thereof and upon the attorney for the local governmental organization, and if the statute upon which the cause of action arises a statute provides for an attorney to represent the local government organization, and an attorney occupies such position, then also upon such attorney.

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Rule 5. Service and Filing of Pleading and Other Papers

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(G) Filing of Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative rule 9(G)(1). Every document prepared by a lawyer or party for filing in a case shall separately identify information excluded from public access pursuant to Admin. R. 9(G)(1) as follows:

(1) Whole documents that are excluded from public access pursuant to Administrative Rule 9(G)(1) shall be tendered on light green paper, marked "Not for Public Access."

(2) When only a portion of a document contains information excluded from public access pursuant to Administrative Rule 9(G)(1), said information shall be omitted [or redacted] from the filed document and set forth on a separate accompanying document on light green paper conspicuously marked "Not For Public Access" and clearly designating [or identifying] the caption and number of the case and the document and location within the document to which the redacted material pertains.

(3) With respect to documents filed in electronic format, the trial court, by order or local rule, may provide for compliance with this rule in a manner that separates and protects access to information excluded from public access.

(4) This rule does not apply to a record sealed by the court pursuant to IC 5-14-3-5.5 or otherwise, nor to records to which public access is prohibited pursuant to Administrative Rule 9(H).

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Rule 27. Depositions before action or pending appeal

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(D) Filing deposition. The filing or custody of any deposition or evidence obtained under this rule shall be in accordance with Trial Rule 5(~~D~~)(E).

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Rule 30. Depositions Upon Oral Examination

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(F) Certification and Filing--Exhibits--Copies

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(4) The filing of depositions shall be in accordance with the provisions of Trial Rule 5(~~D~~)(E).

Rule 31. Deposition of witnesses upon written questions

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(B) Officer to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(C), (E), and (F), to take the testimony of the witness in response to the questions and

to prepare, certify, and deliver the deposition, attaching thereto the copy of the notice and the questions received by him, in accordance with Rule 5(D)(E).

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Rule 32. Use of depositions in court proceedings

(A) **Use of depositions.** At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the ~~rules of evidence~~ Rules of Evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition, by or against any party who had reasonable notice thereof or by any party in whose favor it was given in accordance with any one [1] of the following provisions:

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Rule 38. Jury Trial of Right

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(D) **Waiver.** The failure of a party to appear at the trial, and the failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(D)(E) constitute waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the other party or parties.

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Rule 56. Summary judgment

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(I) **Alteration of Time.** ~~For cause found, The the Court, for cause found,~~ may alter any time limit set forth in this rule upon motion made within the applicable time limit.

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Rule 58. Entry and content of judgment

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(C) Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G)(1). Every court that issues a judgment or order containing documents or information excluded from public access pursuant to Administrative Rule 9(G)(1) shall comply with the provisions of Trial Rule 5(G).

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Rule 77. Court records

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(D) Record of judgments and orders (order book). The clerk of the circuit court shall maintain a daily, verbatim, ~~printed~~ compilation of all judgments of the court, designated orders of the court, orders and opinions of an appellate tribunal relating to a case heard by the court, local court rules under Trial Rule 81, certification of the election of the regular judge of the court, any order appointing a special judge, judge pro tempore, or temporary judge, the oath and acceptance of any judge serving in the court, any order appointing a special prosecutor, and the oath and acceptance of a special prosecutor. ~~At regular intervals to be determined by the court, the daily compilations shall be assembled in a bound binder which bears the name of the court, the volume number assigned, and the time period included in the assembled compilations. The record of judgments and orders may be kept in a paper format, on microfilm, or electronically.~~ The clerk may maintain a separate record of judgments and orders as required for the functional management of the court's business. Except where the record of judgments and orders is maintained electronically, a separate record of judgments and orders for confidential materials shall be maintained. ~~A separate record of judgments and orders for confidential materials shall be maintained as required by law.~~

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Rule 79. Special judge selection: circuit, superior, probate, municipal, and county courts

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(F) Selection by Panel. In the event a special judge is not selected under Sections (D) or (E) of this rule, this section shall be used for the selection of a special judge.

(1) *Naming of Panel.* Within two (2) days of deciding that a special judge must be appointed under this section, the judge before whom the case is pending shall submit a panel of three persons eligible under Section J to the parties for striking. In the event the judge before whom the case is pending is unavailable to submit the panel, the regular judge of the court where the case is pending shall submit the panel to the parties.

(2) *Striking From Panel.* In an adversary proceeding, each party shall be entitled to strike one judge from the panel. In an *ex parte* proceeding, the sole party shall be entitled to strike one judge from the panel. The moving party shall be entitled to strike first, and shall have seven (7) days from the day the clerk mails the panel to the parties to strike. The nonmoving party, or the Clerk of the Court in an *ex parte* proceeding, shall have seven (7) days from the date of the first strike to make the final strike. ~~The parties shall have not less than seven (7) days nor more than fourteen (14) days from the time the clerk mails the panel to the parties to strike as the court may allow.~~

(3) *Failure of Nonmoving Party or Clerk to Strike.* If the nonmoving party, or the Clerk of the Court in an *ex parte* proceeding, fails to ~~timely~~ strike within the time required by subsection (2), the moving party shall have seven (7) days from that time to make, the judge who submitted the panel shall resume jurisdiction of the case. If the case is an *ex parte* proceeding or if a non-moving party fails to timely strike, the Clerk of the Court shall make the final strike.

(4) *Failure of Moving Party to Strike.* If the moving party fails to strike under either subsection (2) or (3) within the time limits required by those subsections, the judge who submitted the panel shall resume jurisdiction of the case.

(4) (5) *Appointment of Special Judge.* The judge who submitted the panel shall appoint the judge remaining on the panel as special judge in the case.

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Trial Rule 81. Local court rules

~~**(A) Rules by local courts.** Each local court may from time to time make and amend rules governing its practice not inconsistent with these rules. In all cases not provided for by rule the local court may regulate its practice in any manner not inconsistent with these rules. Two (2) copies of all rules made by a local court shall upon their promulgation be furnished to the clerk of the Supreme Court and Court of Appeals.~~

(A) Authority. Courts may regulate local court practice by adopting and amending in accordance with this Rule local rules not inconsistent with – and not duplicative of – these Rules of Trial Procedure or other Rules of the Indiana Supreme Court. Courts are strongly encouraged to adopt a single set of local rules for use in all courts of record in a county and will be required to do so after January 1, 2007. The single set may reflect different practices due to geographic, jurisdictional and other variables. Courts shall not use standing orders (that is, generic orders not entered in the individual case) to regulate local court practice. Local rules requiring approval of the Indiana Supreme Court or the Division of State Court Administration are subject to the provisions of this rule.

(B) Notice and comment.

(1) When a court proposes to adopt or amend local rules, it shall give notice to the bar and public of the content of the proposal, the time period for the bar and public to comment, the address to which comments should be sent, and the proposed effective date. Notice shall include, but not be limited to, transmitting the proposal to the officers of any local county bar association.

(2) The court shall also transmit the proposal to the county clerk and to the Division of State Court Administration in digital format. The county clerk shall post the proposal in the county clerk's office(s) and on the county clerk's website, if any, and the Division of State Court Administration shall post the proposal on the Indiana Judicial Website for public inspection and comment. The court and the Division of

State Court Administration shall receive comments for not less than forty-five (45) days.

(C) Schedule. The Division of State Court Administration shall establish and publish a uniform annual schedule, similar to the schedule for proposed Supreme Court rules under Rule 80(D), for publishing proposed local rules, receiving comment, adopting rules, and the effective date of adopted rules.

(D) Exceptions to the schedule. If a court finds that there is good cause to deviate from the schedule established by the Division of State Court Administration, the court may adopt or amend local rules at other times and without notice and opportunity for comment. However, a local rule shall not take effect unless it has first been posted for thirty (30) days in the county clerk's office(s) and on the county clerk's website, if any, and on the Indiana Judicial Website. The court promptly thereafter shall provide opportunity to comment in the manner provided in subsection (B)(1) above.

(E) Style, format, and numbering. The Division of State Court Administration shall establish and publish a standard format for drafting and amending local rules. The format shall include a uniform numbering system which, to the extent practicable, corresponds to the numbering of these Rules of Trial Procedure and other Rules of the Indiana Supreme Court.

(F) Adopted Rules. The court shall cause adopted rules and amendments to be placed in the Record of Judgments and Orders, shall cause the county clerk to post them in the county clerk's office(s) and on the county clerk's website, if any, for public inspection, and shall transmit a copy of the rules in digital format to the Division of State Court Administration for posting on the Indiana Judicial Website.

(G) Availability of local rules. All local rules, as amended and with any appendices thereto, shall be compiled into one document, which shall be posted and available in the clerk's office at all times for public inspection and on the county clerk's website, if any. They shall be available free of charge on the Indiana Judicial Website.

(H) Suspension of local rules. In an individual case the court, upon its own motion or the motion of any party, may waive, suspend or modify compliance with any local rule if the interests of justice so require. All such waivers, suspensions or modifications shall be entered in the Chronological Case Summary of the case.

(I) Transition. To continue in effect local rules promulgated before the effective date of this Rule, the court shall (1) renumber such rules according to the uniform numbering system established by the Division of State Court Administration under subsection (E) above, (2) cause such rules to be posted and available in the clerk's office as required by subsection (G) above, and (3) transmit a copy of such rules in digital format to the Division of State Court Administration for posting on the Indiana Judicial Website. By January 1, 2007, local rules must be in compliance with the terms of this Rule.

(J) Periodic review and update. Courts should review periodically and change local rules as required by changes in statutes, case law, or these Rules of Trial Procedure or other Rules of the Indiana Supreme Court.

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These amendments shall take effect January 1, 2005.

The Clerk of this Court is directed to forward a copy of this order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and the West Group.

The West Group is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this _____ day of September, 2004.

Randall T. Shepard
Chief Justice of Indiana

All Justices concur.